

**BEFORE THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.**

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<b>In the matter of</b>	)	<b>DOCKET Nos.</b>	<b>OST-97-2881</b>
	)		<b>OST-97-3014</b>
	)		<b>OST-98-4775</b>
<b>COMPUTER</b>	)		<b>OST-99-5888</b>
<b>RESERVATION SYSTEMS (CRS)</b>	)		
<b>REGULATIONS</b>	)		
	)		
<b>Notice of Proposed Rulemaking</b>	)		
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**RESPONSE OF THE AIR CARRIER ASSOCIATION OF AMERICA  
TO THE DEPARTMENT OF TRANSPORTATION EXTENSION OF THE COMMENT  
PERIOD**

Communications with respect to this document should be addressed to:

Edward P. Faberman  
AIR CARRIER ASSOCIATION  
OF AMERICA  
1500 K Street, NW, Suite 250  
Washington, DC 20005-1714  
Tel: 202-639-7502  
Fax: 202-639-7505

December 20, 2002

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On November 22, 2002, a number of parties (“Petitioners”) including Amadeus Global Travel Distribution, S.A.; Galileo International L.L.C.; Sabre, Inc.; Interactive Travel Services Association; American Society of Travel Agents, Inc.; Rosenbluth International; National Business Travel Association and National Consumers League submitted a petition requesting that the Department of Transportation (“Department”) extend the due date for initial comments on the Department’s November 15, 2002 Notice of Proposed Rulemaking (“NPRM”), “CRS Regulations and Statement of Policy”, from January 14, 2003 to March 16, 2003 and to extend the due date for reply comments from February 13, 2003 to May 15, 2003. The Petitioners requested that the Department act on their Petition no later than December 3, 2002.

On December 2, 2002, the Department once again delayed its review of the CRS regulations. In extending the review period, it delayed all issues addressed by this never-ending rulemaking despite repeated Department statements that while it intends “to address all of the rulemaking issues in the overall reexamination, and to do so promptly, we will consider acting more quickly on specific issues as necessary.”

In comments filed on the petition to extend the comment period, the Air Carrier Association of America (“ACAA”) stated that even if the Department provides additional time for submission of comments on the proposed CRS modifications, that it move “more quickly” to amend Section 255.10(a), “Marketing and Booking Information.” (This marks the fifth time that ACAA has made this request.) While the Department is reviewing complex CRS issues, it should immediately block release of any data showing sale of tickets on an airline unless that airline consents to release of that information.

During the past several years, multiple parties including the American Society of Travel Agents, the National Business Travel Association, American Express, the Minnesota State Attorney General, Midwest Express and others have called upon the Department to eliminate the “anti-competitive” weapon provided by Section 255.10(a).

As American Express noted in comments filed with the Department on April 12, 2000:

When Section 255.10 was enacted, CRSs could only produce historical data, typically 60-90 days post flight, which the airlines would use for trend analysis and other acceptable purposes. Since then, technology has progressed to the point that today CRSs are producing and making available real time data. An airline can, thus, obtain up to the minute analysis of competitors’ sales, market share and customer information, even on a *pre-flight* basis. A carrier, so disposed, is able to use this real time (and advance) data for predatory pricing, blocking new entrants

from the marketplace, signaling and other anticompetitive activity. What began as a tool to promote competition has become a weapon to eliminate it.

The Department of Justice has also commented on the need to address the anti-competitive use of CRS data:

carriers have almost instantaneous knowledge of competitor's fare changes and the ability to quickly respond to any changes. . . . Furthermore, although information on unpublished fare competition is certainly less perfect than for published fares, carriers are still able, from ARC and CRS data, to identify corporations and travel agencies where they are losing business and usually the competitor that is gaining business at their expense. Carriers thus have the ability to identify and retaliate against competitors reducing even off-tariff fares.

U.S.-U.K. Alliance (Docket OST 2001-11029-29, p28) December 17, 2001, [emphasis added]

Even the Department of Transportation has acknowledged the anti-competitive use of "Marketing and Booking Information":

In addition, computer reservation systems ("CRS's") have played an important role in airline distribution...An incumbent airline can learn from a CRS the fares being charged by a new rival and can plan its response. Levine, "Airline Competition in Deregulated Markets," at 459-463.

Department's Enforcement Policy Regarding Unfair Exclusionary Conduct In The Air Transportation Industry, Docket OST-98-3713, "Findings and Conclusions on the Economic, Policy, and Legal Issues"

On December 13, 2002, Northwest Airlines, Inc. filed a reply and contingent motion for leave in this proceeding. In its reply, Northwest stated, "resolving any individual CRS issue(s) before the entire CRS rulemaking is completed would be inefficient and ill-advised." This is exactly why the Department needs to act. In the years since this review was initiated, several

carriers have been driven out of business and many have been driven from markets by large carriers utilizing this data. Northwest wants a “blank check” to continue to attack competition. The Department can act now to preserve competition or sit back as additional areas of the country lose competition. As to Northwest’s claim that delaying this decision will produce “a more complete record,” this issue has been before DOT for years. As noted above, dozens of comments have already been submitted on this issue. Northwest has had multiple opportunities to provide comments.

Whether Section 255.10 should remain in place does not need any additional analysis. It has been 2,378 days since the Department initiated its review of these regulations. Isn’t that enough time?

Therefore, ACAA requests that the Department “act more quickly” and immediately modify 14 CFR § 255.10(a) so that a carrier would only be allowed to buy the data of another carrier through a CRS system provided that the other carrier specifically agrees to the sale of its data. If a carrier objects to the sale of its data, it could not be sold by any system under a modified Section 255.10(a). Section 255.10(a) should be amended as follows:

**§ 255.10 Marketing and booking information.**

(a) Each system shall make available to all U.S. participating carriers on nondiscriminatory terms all marketing, booking, and sales data relating to carriers that it elects to generate from its system subject to the following conditions: 1) The data made available shall be as complete and accurate as the data provided a system owner; and 2) The system shall not provide to any participating carrier data on another carrier unless that other carrier has provided written authorization for the system to release the data.

As a minimum the Department should suspend this provision as it decides upon a final comprehensive CRS Rule.

The need to level the playing field has never been greater. Dominant carriers must not be allowed to utilize data available under Section 255.10(a) to increase their domination. By taking this small step, the Department will eliminate one of the roadblocks to the expansion of competition. It is time to address this issue and not put off a decision for additional months and years. Competition must not be again put on hold.

Respectfully submitted,

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Edward P. Faberman  
Executive Director

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